IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10300 of 2004
With
CRIMINAL MISC.APPLICATION No. 10301 of 2004
In CRIMINAL MISC.APPLICATION No. 10301 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VALLABHCHAND SINGHVI (JAIN) - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MS ARCHANA R ACHARYA for Applicant(s) : 1,
MR HL JANI for Respondent(s) : 1,
MR RR MARSHALL for Respondent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/10/2005

ORAL JUDGMENT

1.The petitioner/original accused no.5 has filed these two petitions praying for quashing and setting aside the

complaint filed by the respondent no.2 being criminal case no. 3167/2004 and 1801/2004 before the learned Judicial Magistrate, First Class, Surat. The petitioner has also prayed for quashing and setting aside the order of issuance of process/summons dated 10.08.2004 and 08.07.04 by JMFC, Surat respectively.

2.This court has issued notice on 03.11.2004. The court has also granted stay of further proceedings of criminal case no. 3167/2004 as well as criminal case no.1801/2004 qua the present petitioner. The court has passed further order on 05.07.2005 and issued Rule. The court has observed in the said order that prima facie it appears that even as per the allegation/statement made in the complaint, the petitioner retired as the Director of the Company on 20.03.2003. The alleged Memorandum of Understanding is dated 08.04.203 and the cheques which were given in pursuance of the MoU were bounced and, therefore, the petitioner cannot be said as Officer In-charge of the company against whom the complaint or prosecution can be maintained under Section 138 of the Negotiable Instruments Act. The court has further observed that the learned Magistrate has passed a printed order, which does not appear to be proper. The court has also observed that the court would have considered the

matter finally. However, the court has issued the Rule on 05.07.2005.

3.Heard Ms. Archana Acharya, the learned advocate appearing for the petitioner and Mr. R.R. Marshall, the learned advocate appearing for the respondent no.2/original complainant and Mr. H.L. Jani, the learned Assistant Public Prosecutor appearing for the respondent no.1 State. It is an admitted position that at the time when the Memorandum of Understanding is signed, the petitioner is not a party or a signatory to the said Memorandum of Understanding. Pursuant to the said Memorandum of Understanding, the cheques were issued and those cheques were bounced. It is, therefore, clear that at the time when the cheques were issued and were bounced the petitioner was not the Director of the Company and hence provisions contained under Section 138 read with Section 141 of the Negotiable Instruments Act are not applicable to the petitioner and no complaint can be maintained against him. The petitioner has also produced the documentary evidence which is annexed with the present petition in the form of Form No-32 filed with the Registrar of Companies(RoC) as well as the receipt issued by the RoC which makes it very clear that the petitioner was not the Director of the Company at the time when the

alleged offence is said to have been committed against the present petitioner.

4.The Statutory provisions and the judicial pronouncements on this subject are very clear. Ms. Archana Acharya has rightly placed reliance on the decision of the Hon'ble Supreme Court in the case of Monaben Ketanbhai Shah and Another v State of Gujarat and Ors. 2004(3) GLH 769. The Hon'ble Supreme Court has made it very clear that it is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper-technical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very

sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the Court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. So in the present case, in the complaint itself the complainant has stated that the petitioner retired as a Director from the company at the time of issuance of cheques. In view of this specific averment in the complaint, it cannot be said that any offence has been committed by the present petitioner.

5.In the above view of the matter and considering the legal position on the subject, the court is of the view that the present petitioner/original accused no.5 has not committed any offence under Section 138 read with Section 141 of the Negotiable Instruments Act. Both these complaints qua the present petitioner are therefore liable to be quashed and set aside and they are accordingly quashed and set aside while exercising the power under Section 482 of the Criminal Procedure Code. Both these petitions are accordingly disposed off.

6.Rule made absolute. No order as to costs.

(K.A. PUJ, J.)

Divya//